IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7231 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

NATUBHAI MANGALDAS MALI C/O GENERAL SECRETARY

Appearance:

1. Special Civil Application No. 7231 of 1999

Mr. M.R. Mengde, AGP for Petitioner No. 1

MR BHARAT T RAO for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 15/11/2003

ORAL JUDGEMENT

Heard learned AGP Mr. Mengde for the petitioner and Mr. Samir Sojatwala, learned advocate for Mr.

B.T.Rao learned advocate for the petitioner. By way of this petition under Article 227 of the Constitution of India, the petitioner Executive Engineer, R. & B. Dn. has challenged the order of the Labour Court, Vadodara dated 22.2.1999 in Recovery Application No. 231 of 1993, under section 33-C(2) of the Industrial Disputes Act, 1947 wherein the labour court has granted the scale of Plumber to the respondent workman with effect from 1st October, 1988 and has also directed the petitioner to make payment of the difference of salary to the respondent.

Mr. Mengde, learned AGP appearing for the petitioner has submitted that the the recovery application was filed by the respondent workman only on the basis of the fact that he was working with the petitioner as a plumber since 21st November, 1973; it was also the case of the respondent that initially, he was appointed as daily wager and he was getting the wages as per the Minimum Wages Act and thereafter, from 1st October, 1988, he completed five years and he was appointed as a regular employee and since 1st October, 1988, he was working as a plumber. The petitioner has not given him the grade of Plumber and instead of that, grade of labour in the pay scale of Rs.750-940 was given and, therefore, aforesaid application was filed by the workman before the labour court under section 33C(2) of the Act which was allowed by the labour court by order dated 22nd February, 1999.

According to Mr. Mengde, the labour court has erred in passing such an order in recovery application without adjudication of the right of the workman under the provisions of the Industrial Disputes Act. According to him, the petitioner was already given the benefit to the respondent workman as a work charge labour w.e.f. 2nd February, 1987 and while receiving such benefit, no objection was raised by the respondent before the petitioner. According to him, there was no any determination of the right of the respondent to get the grade of Plumber and, therefore, the labour court is not justified in passing such an order in recovery application; the labour court was having no powers to adjudicate such an issue for the first time raised by the respondent in such an application. He has also submitted that the labour court has erred in not properly appreciating the facts on record. According to him, the evidence before the labour court was also not appreciated by the labour court in its proper perspective. According to him, right to get grade of Plumber was not crystallized and, therefore, the labour court has

committed jurisdictional error in passing such an order.

On the other hand, learned advocate Mr. Sojatwala appearing for Mr. Rao for the petitioner has submitted that since there was an admission on the part of the petitioner before the labour court that the present respondent was working as a Plumber; doing the work of plumber and they were taking such work from him, there was no any need of adjudication of the right of the respondent workman. He also submitted that the labour court has made specific observations in the order [page 29 of the compilation, internal page 10 of the order of the labour court] that there was no dispute raised by the petitioner before the labour court that the respondent was not working on the post of plumber; on the contrary, no such dispute was raised by the petitioner before the labour court in reply and after considering the averments of the petitioner before the labour court and considering the evidence on record, it was found by the labour court that the respondent was working w.e.f. 1st October, 1988 and he remained as such but he was not given the salary of the plumber though he was doing the work of plumber. He also made a reference to page 27 wherein the evidence of the petitioner witness Mr. N.H. Patel was discussed, who was cross examined by the representative for the workman that he was working since more than eight years and he was not aware as to whether the respondent was working as a plumber or not but as there was no person under him working as plumber but he clarified before the labour court that as and when required, work of plumber was being taken from the respondent and accordingly the respondent was carrying out the duty and was doing the work of plumber as per their instructions as per the note book Exh.13/1 before the labour court. Said witness for the petitioner has also admitted before the labour court that in Government Colony, there is no post of Plumber available and, therefore, as and when necessity was arising, they were taking such work of plumbing from the respondent and, therefore, he submitted that even in one office order in respect of election duty, the present respondent was designated as a Plumber. In the Identity Card issued to the respondent also, he was designated as a Plumber. Therefore, the labour court after considering all such documentary evidence on record which was not controverted or denied by the petitioner before the labour court, made order and directed the petitioner to give the grade of plumber to the respondent which is based on the evidence on record and, therefore, there was no any necessity of adjudication of the right of the respondent Therefore, according to Mr. Sojatwala, the labour court has not committed any jurisdictional error

and, therefore, there is no substance in the present petition and the same is required to be dismissed with costs.

I have perused the order made by the labour court. I have also considered the averments made in the petition and the submissions made by the learned advocates for the parties. Before the labour court, aforesaid recovery application was filed by the respondent under section 33C (2) of the ID Act, 1947 on the basis of the fact that he was working with the petitioner as a plumber since 21st November, 1973; it was also the case of the respondent that initially, he was appointed as daily wager and he was getting the wages as per the Minimum Wages Act and thereafter, from 1st October, 1988, he completed five years and he was appointed as a regular employee and since 1st October, 1988, he was working as a plumber. The petitioner has not given him the grade of Plumber and instead of that, grade of labour in the pay scale of Rs.750-940 was given and, therefore, though he was doing the work of plumber, the petitioner was not paying him the salary for the post of Plumber and, therefore, aforesaid recovery application was filed by him before the labour court. Before the labour court, grievance was raised by the respondent that though the work of plumber was being taken from him by the petitioner, he was not being paid the salary for the post of plumber. Reply to the said recovery application was filed by the petitioner before the labour court at Exh. 18 wherein the petitioner contended that the respondent is not working as a plumber but he was a work charged labour. Before the labour court, one witness Mahendra Vaghaji Thakkar was examined at Exh. 10 on behalf of the workman and the workman was examined at Exh. 24 and thereafter, on behalf of the petitioner, one witness Nagin H. Patel was examined at Exh. 35 who was working as work assistant and, thereafter, the labour court examined the question on the basis of the oral and documentary evidence on record. The labour court has considered the reply submitted by the petitioner wherein the labour court has observed that the petitioner is not denying that the respondent workman was working as plumber, meaning thereby, it was an admission on the part of the petitioner that the workman was working as a plumber because there is no denial made by the petitioner in its written statement and thereafter, the labour court has considered identity card Mark 13/4 wherein the petitioner has designated the respondent as a Plumber. The labour court has also considered one certificate produced by the petitioner dated 29.12.1978 wherein also it has been certified that the respondent is working

since 21st November, 1976 and also working as a pump man and plumber and helper with the petitioner and his work is satisfactory. The labour court has also examined and considered one another letter mark 13/6 wherein also the facts were disclosed that the present respondent NATUBHAI MANGALDAS MALI was working as a Plumber w.e.f. 31.3.1986 at Salatwada Site and his work was found satisfactory. The labour court has also considered one document Mark 17/7 wherein the respondent was appointed on work charge basis as a work charge plumber by the petitioner in the pay scale of Rs.950-1400 which was required to be implemented with effect from 2nd February, 1987. The labour court has also considered one order of the petitioner dated 9.2.1998 wherein also the name of the respondent NATUBHAI MANGALDAS MALI has been shown as Plumber who is required to remain present for the printing work of ballet papers from 8.00 to 4.00 hours at Salatwada section. In view of this documentary evidence as well as the oral evidence on the record, ultimately, the labour court concluded while considering the cross examination of the witness for the petitioner wherein the witness for the petitioner has submitted that as and when they were requiring the work of plumber, it was being taken from the respondent as the post of plumber is not available and no other plumber has been appointed by the petitioner. In view of this oral and documentary evidence on record, which was rightly appreciated by by the labour court, it came to the conclusion that the respondent was working as such w.e.f. 1st October, 1988 on the post of Plumber entitled for the scale of Rs. 950-1400 and accordingly, order in question has been made by the labour court on 22nd February, 1999.

I have considered the observations made by the labour court. According to my opinion, the observations of the labour court are based on the oral and documentary evidence of the petitioner itself as well as the evidence of the respondent workman. The contention of the respondent that he was doing the work of plumber was not denied before the labour court by the petitioner but it was impliedly admitted and In view of the facts and circumstances of the case, now this court cannot reappreciate the same evidence which was once appreciated by the labour court. When there is no denial in the written statement filed by the petitioner before the labour court and when it was not the case of the petitioner before the labour court that the respondent was not working as plumber but when the petitioner and his witnesses have clearly deposed before the labour court that they were taking such plumbing work from the respondent workman, it amounts to admission that the

respondent was working as a plumber. Over and above such oral evidence, there were documentary evidence on record wherein the petitioner has designated the respondent as plumber as stated above, namely identity card of the respondent and the order relating to election duty and various other letters of the office of the petitioner. Therefore, considering such an oral and the documentary evidence on record as discussed hereinabove, according to my opinion, the labour court was right in appreciating the documentary and oral evidence before it and was right in passing the order in question. I am also of the opinion that in view of the evidence both oral and documentary evidence on record showing that the petitioner designated the respondent workman as plumber and was doing the work of plumber, adjudication of the right of the respondent was not necessary and, therefore, the labour court was right in granting relief in favour of the respondent in recovery application under section 33C(2) of the ID Act, 1947. In a petition under Article 227 of the Constitution of India, this Court is having very limited scope of interference. Unless it is successfully pointed out and established that there is any jurisdictional error and/or procedural irregularity committed by the labour court, the findings of fact recorded by the labour court after appreciating the documentary and oral evidence on record cannot be disturbed and reappreciated. In this case, learned AGP Mr. Mengde has not been able to point out that such findings of fact recorded by the labour court are perverse or that the labour court has committed any jurisdictional error or that the labour court has committed any procedural irregularity in passing the order in question.

Recently, the Apex Court has considered the scope of Article 226 and 227 of the Constitution of India in case of OUSEPH MATHAI AND OTHER V. M. ABDUL KHADIR reported in 2002 [1] SCC 319; in case of ROSHAN DEEN VS. PREETILAL reported in [2002] 1 SCC Pg.100; in the case of ESSEN DEINKI V. RAJIV KUMAR, 2003 SC Labour & Service page 13. Therefore, in view of the aforesaid decisions about the limited scope of interference in a petition under Article 227 of the Constitution of India and also considering the facts and circumstances of the present case, I am of the opinion that the labour court was right in appreciating the evidence on record and was perfectly right in granting relief in favour of the respondent workman in recovery application under section 33C(2) of the I.D. Act, 1947. Therefore, the order made by the labour court does not require any interference and the petition is, therefore, liable to be dismissed.

In the result, this petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated. There shall be no order as to costs.

Dt. 15.11.2003. (H.K. Rathod,J.)

Vyas